

FILED

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NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

MORGAN RHEAD,

Plaintiff - Appellant,

v.

J. MUNDY; J. EASTMAN; G. HART; CITY
OF CARLSBAD POLICE DEPARTMENT,

Defendants - Appellees.

No. 02-55817

D.C. No. CV-01-00629-LAB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Argued and Submitted July 8, 2003

Pasadena, California

Before: SILVERMAN, W. FLETCHER, and RAWLINSON, Circuit Judges.

In *Heck v. Humphrey*, 512 U.S. 477 (1994), the Supreme Court held that
“when a state prisoner seeks damages in a § 1983 suit, the district court must

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consider whether a judgment in favor of the plaintiff *would necessarily imply the invalidity of his conviction* or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.” *Id.* at 487 (emphasis added). Morgan Rhead appeals from the district court’s grant of summary judgment to the defendants under *Heck*. We reverse.

The defendants have the burden of showing that success by Rhead in his § 1983 action would *necessarily* imply the invalidity of his conviction under California Penal Code § 148(a). *Sanford v. Motts*, 258 F.3d 1117, 1119 (9th Cir. 2001); *see also Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1105 (9th Cir. 2000). They have not done so here. Nothing in the record reveals the factual basis of Rhead’s nolo plea to § 148(a). The fact section of the plea document was left blank, and no facts were presented at the plea colloquy in front of the California Superior Court. The state-court judge, who was in the best position to understand the factual basis of Rhead’s conviction, apparently saw no bar to any civil proceeding arising from Rhead’s nolo plea. We therefore hold that Rhead’s § 1983 suit, if successful, would not necessarily imply the invalidity of his conviction and thus is not *Heck*-barred.

REVERSED and REMANDED.